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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

GERARDO PEREZ,

Plaintiff,

v.

JENNIFER NASH, *et al.*,

Defendants.

Case No. 2:21-cv-00075-RFB-MDC

**CORECIVIC DEFENDANTS'
MOTION TO STAY**

To promote judicial economy and the interests of Rule 1 of the Federal Rules of Civil Procedure, Defendants Walker, Samburg, Narvaez and Morgan (“CoreCivic Defendants”) request that the Court stay all case management deadlines set forth in the Joint Discovery Plan and Scheduling Order (Dkt. 156) pending resolution of Defendants’ Motion to Dismiss (Dkt. 155).¹ A stay is warranted where: (1) CoreCivic Defendants’ Motion is potentially dispositive of all claims against them; (2) discovery is unnecessary for the Court to rule on CoreCivic Defendants’ Motion; (3) a “preliminary peek” reveals the likelihood that CoreCivic Defendants’ Motion will be successful; and (4) a brief stay serves the interest of fairness by

¹ The Motion to Dismiss is fully briefed and pending a ruling by the Court.

1 preventing the CoreCivic Defendants, who have never been served process in this case and
2 lack the requisite contacts with Nevada, from being haled into this Court and required to
3 participate in potentially unnecessary discovery, preserving their resources as well as
4 Plaintiff's and the Court's.

5 **I. Introduction.**

6 This Court lacks personal jurisdiction over CoreCivic Defendants, and for that reason,
7 they should not be subjected to discovery. Courts in this District have applied a presumption
8 that a pending motion to dismiss for lack of personal jurisdiction warrants staying or
9 restricting discovery. CoreCivic Defendants have never been properly served in this matter in
10 either their individual or official capacities. Nor are they Nevada residents and, as explained
11 more fully in Defendants' Motion to Dismiss (Dkt. 155) and Reply (Dkt. 159), they do not
12 have sufficient contacts with the State of Nevada. Accordingly, CoreCivic Defendants should
13 not be subject to the burdens of defending themselves and conducting discovery pending the
14 Court's resolution of the Motion to Dismiss.

15 **II. Legal Argument.**

16 The Court has broad discretion to control discovery to determine whether a stay is
17 appropriate. *See Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936) (“[T]he power to stay
18 proceedings is incidental to the power inherent in every court to control the disposition of the
19 causes on its docket with economy of time and effort for itself, for counsel, and for litigants.”);
20 *Little v. City of Seattle*, 864 F.2d 681, 685 (9th Cir. 1988) (“The district court has wide
21 discretion in controlling discovery.”). This power is axiomatic in Federal Rule of Civil
22 Procedure 26(c)(1), which states that “[t]he court may, for good cause, issue an order to
23 protect a party or person from annoyance, embarrassment, oppression, or undue burden or
24 expense.” *See Grammer v. Col. Hosp. Ass’n Shared Servs., Inc.*, 2015 WL 268780, *2
25 (D. Nev. Jan. 21, 2015) (Rule 26(c)(1) “includes the power to stay discovery”).

26 In deciding whether to grant a stay of discovery, the Court is guided by the objectives
27 of Rule 1 to ensure a “just, speedy, and inexpensive determination of every action.” *Tradebay*,
28

1 *LLC v. eBay, Inc.*, 278 F.R.D. 597, 602–603 (D. Nev. 2011). Courts in this District have
 2 formulated three considerations in determining whether to stay discovery pending resolution
 3 of a potentially dispositive motion: (1) the pending motion is potentially dispositive; (2) the
 4 potentially dispositive motion can be decided without additional discovery; and (3) the Court
 5 has taken a “preliminary peek” at the merits of the potentially dispositive motion and is
 6 convinced that the plaintiff will be unable to state a claim for relief. *Id.*

7 Each of these considerations tips in CoreCivic Defendants’ favor. As such, the Court
 8 should stay case management deadlines pending resolution of CoreCivic Defendants’ Motion
 9 to Dismiss.

10 **A. If Granted, CoreCivic Defendants’ Motion Will Dispose of Plaintiff’s**
 11 **Case.**

12 CoreCivic Defendants’ Motion to Dismiss, which was filed pursuant to Federal Rule
 13 of Civil Procedure 12(b)(2)–(3) and (5), is potentially dispositive of all claims against them.
 14 *See SmarterSwipe, Inc. v. Navarrete*, No. 224CV00299CDSMDC, 2024 WL 1344713, at *1
 15 (D. Nev. Mar. 29, 2024) (12(b)(2) motion dispositive); *Gallo v. Crawford*, No. 2:03CV1548
 16 RCJLRL, 2007 WL 773845, at *3 (D. Nev. Mar. 9, 2007) (12(b)(5) motion dispositive). As
 17 established in Defendants’ Motion to Dismiss (Dkt. 155) and Reply (Dkt. 159), CoreCivic
 18 Defendants do not have sufficient contact with Nevada, and the conduct Plaintiff complains
 19 of occurred in Arizona, not Nevada. Accordingly, Nevada cannot exercise personal
 20 jurisdiction over these Defendants. Further, Plaintiff failed to serve them. “A federal court
 21 does not have jurisdiction over a defendant unless the defendant has been served properly
 22 under Fed. R. Civ. P. 4.” *Direct Mail Specialists v. Eclat Computerized Techs., Inc.*, 840 F.2d
 23 685, 688 (9th Cir. 1988). Either way, Plaintiff’s claims against CoreCivic Defendants are
 24 subject to dismissal.

25 Because CoreCivic Defendants’ Motion to Dismiss is potentially dispositive of all
 26 claims against them, a stay pending its resolution is warranted. *Tradebay*, 278 F.R.D. at
 27 602–603.
 28

B. Additional Discovery is Not Needed.

In determining whether to order a stay, the Court will look to see whether a decision can be made on the pending dispositive motion without the need for additional discovery. *See Money v. Banner Health*, No. 3:11-cv-00800-LRH-WGC, 2012 WL 1190858, *12 (D. Nev. Apr. 9, 2012) (staying discovery where the court was equipped to decide a pending dispositive motion “without further discovery”). Additional discovery is not required to decide CoreCivic Defendants’ Motion to Dismiss, and Plaintiff did not request additional time to conduct discovery either before responding to the Motion or before the Court rules on it.

Regarding service of process, Plaintiff bears the burden of establishing that service was proper. *See Brockmeyer v. May*, 383 F.3d 798, 801 (9th Cir. 2004) (“Once service is challenged, plaintiffs bear the burden of establishing that service was valid under Rule 4.”). Plaintiff did not need additional discovery to respond to CoreCivic Defendants’ Motion to Dismiss. Rather, Plaintiff conceded in his response that service was not effectuated on CoreCivic Defendants by noting that service was only attempted via email and FedEx. (Dkt 157 at 10.) He failed to address CoreCivic Defendants’ arguments that such service was improper under the applicable state and Federal Rules, and he fails to address the many cases and other legal authority cited in support of those arguments. Plaintiff failed to carry his burden to establish proper service on CoreCivic Defendants.

Plaintiff also did not seek additional discovery to respond to CoreCivic Defendants’ Motion to Dismiss regarding lack of personal jurisdiction. Plaintiff rested on the Motion to Dismiss briefing, which is now closed, and the Court can render a decision without the need for additional discovery. As established in CoreCivic Defendants’ Motion, they do not have sufficient contacts with Nevada to justify haling them into a Nevada court. “However minimal the burden of defending in a foreign tribunal, a defendant may not be called upon to do so unless he has had the ‘minimal contacts’ with that [s]tate that are a prerequisite to its exercise of power over him.” *Talentscale, Inc. v. Aery Aviation, LLC*, No. 223CV00238CDSNJK, 2023 WL 4888435, at *5 (D. Nev. Aug. 1, 2023) (citing *Hanson v. Denckla*, 357 U.S. 235, 251 (1958)).

1 Because additional discovery is not needed to make a determination on the Motion to
2 Dismiss, a stay is warranted pending its outcome.

3 **C. A “Preliminary Peek” Reveals that CoreCivic Defendants’ Motion is**
4 **Likely to be Granted.**

5 Courts in Nevada often take a “preliminary peek at the merits of the potentially
6 dispositive motion” to determine whether a stay on discovery is warranted. *Kor Media Grp.,*
7 *LLC v. Green*, 294 F.R.D. 579, 581 (D. Nev. 2013); *see Clark v. New Century Mortgage Co.*,
8 2017 WL 4453336, *2 (D. Nev. Oct. 4, 2017). In *SVI, Inc. v. Supreme Corp.*,
9 No. 216CV01098JADNJK, 2017 WL 7725248, at *2 (D. Nev. Mar. 7, 2017), the court
10 granted a motion to stay discovery where this preliminary peek divulged (1) that the pending
11 motion to dismiss based on lack of personal jurisdiction, if granted, may resolve the primary
12 issues raised in Plaintiff’s complaint; (2) the motion to dismiss “can be decided without
13 additional discovery”; and (3) “a stay of discovery is warranted based upon the merits of
14 Defendant’s motion to dismiss.” *Id.* at *1; *see also Int’l Markets Live, Inc. v. Profit Connect*,
15 2019 WL 8161569, *1 (D. Nev. May 20, 2019) (applying second and third prongs of this test
16 to grant motion to stay discovery).

17 Applying this test to the instant case, a preliminary peek at CoreCivic Defendants’
18 Motion to Dismiss justifies staying discovery. As set forth above, all three of these factors are
19 met here. First, if granted, the Motion to Dismiss would result in CoreCivic Defendants’
20 dismissal. Second, resolution of the Motion to Dismiss does not require additional discovery.
21 Rather, accepting as true the allegations in Plaintiff’s Complaint, the Court will be able to
22 determine the propriety of personal jurisdiction over CoreCivic Defendants. Finally, the
23 merits of CoreCivic Defendants’ personal jurisdiction challenge warrant a stay of discovery.
24 The Complaint does not plead facts establishing either general or specific jurisdiction over
25 Defendants in Nevada; rather, all of Plaintiff’s allegations against CoreCivic Defendants arise
26 out of his incarceration in CoreCivic’s Saguaro Correctional Center (“SCC”) in Arizona, and
27 no CoreCivic Defendant expressly aimed any conduct at Nevada, let alone conduct sufficient
28 to establish specific jurisdiction in Nevada.

Because a preliminary peek at the Motion to Dismiss reveals that this Court lacks personal jurisdiction over CoreCivic Defendants, the case should be stayed pending resolution of the Motion. *See Hologram USA, Inc. v. Pulse Evolution Corp.*, 2015 WL 1600768, *2 (D. Nev. Apr. 8, 2015) (“Because the Court is not convinced that the exercise of personal jurisdiction over Defendants will be found to be proper by the district judge, it is appropriate to stay discovery pending the resolution of the motion to dismiss.”).

D. A Motion Challenging Personal Jurisdiction Strongly Favors a Stay.

Where the underlying motion to dismiss is brought pursuant to Rule 12(b)(2) for lack of personal jurisdiction, a less rigorous standard is applied, as “courts are more inclined to stay discovery pending resolution of a motion to dismiss challenging personal jurisdiction because it presents a ‘critical preliminary question.’” *See, e.g., Kabo Tool Co. v. Porauto Indus. Co.*, No. 2:12-cv-01859-LDG-NJK, 2013 WL 12321307, at *1 (D. Nev. Apr. 15, 2013) (quoting *AMC Fabrication, Inc. v. KRD Trucking W., Inc.*, No. 2:12-cv-00146-LDG-CWH, 2012 WL 4846152, at *2 (D. Nev. Oct. 10, 2012)). Thus, “a pending motion challenging jurisdiction strongly favors a stay, or at minimum, limitations on discovery until the question of jurisdiction is resolved.” *See AMC Fabrication, Inc.* 2012 WL 4846152, at *2. As this Court previously explained in analyzing a motion to stay pending resolution of a dispositive motion challenging jurisdiction:

A defendant should not be required to participate in burdensome and costly discovery in a forum that has no jurisdiction over him or in a lawsuit brought in any forum when he is immune from suit as a matter of law. The purpose served by laws that grant immunity from suit, in particular, would be significantly undermined if the defendant was required to bear the burden and expense of litigation until he could obtain a court order establishing his immunity. The court also has an interest in not providing a forum and being required to supervise discovery in a dispute over which it lacks subject matter jurisdiction.

Grand Canyon Skywalk Development, LLC v. Steele, No. 2:13-cv-00596-JAD-GWF, 2014 WL 60216, at *4 (D. Nev. Jan. 7, 2014). For these reasons, ordering a stay in the matter pending the outcome of the Motion to Dismiss will serve the interests of fairness to CoreCivic

Defendants over which this Court does not have jurisdiction, and it will aid in accomplishing the inexpensive and speedy resolution of this case as to CoreCivic Defendants.

III. Conclusion.

For the reasons set forth above, CoreCivic Defendants respectfully request that this Court grant the Motion to Stay and stay all discovery and scheduling deadlines pending resolution of the Motion to Dismiss.

RESPECTFULLY SUBMITTED this 25th day of April 2024.

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IT IS SO ORDERED. The plaintiff filed a non-opposition. ECF No. 161. Parties shall file an Amended Joint discovery plan and scheduling order within 21 days of the entry of order on defendants' motion to dismiss (ECF No. 155), unless the order grants the motion in its entirety and disposes of the action.



Hon. Maximiliano D. Couvillier III
United States Magistrate Judge
Dated: 5/17/24